

J. CHRISTOPHER JORGENSEN, ESQ.
STATE BAR NO. 5382
DIANA S. ERB, ESQ.
STATE BAR NO. 10580
LEWIS AND ROCA LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
(702) 949-8200
(702) 949-8398/fax

Attorneys for Defendant Mortgage
Electronic Registration Systems, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

ANDREA G. SANIEL,

Plaintiff,

vs.

RECONTRUST COMPANY; BANK OF
AMERICA; COUNTRYWIDE HOME
LOANS; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;

Defendants.

Case:

**PETITION FOR REMOVAL OF CIVIL
ACTION**

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEVADA:

The removing party, Mortgage Electronic Registration Systems, Inc. ("MERS" or
"Defendant"), respectfully shows:

1. MERS is a Defendant in the above-entitled action.
2. That the above-entitled action was commenced in the Eighth Judicial District Court
of the State of Nevada, in and for the County of Clark, and is now pending in that Court under the
designated Case No. A601879.
3. Service of the summons and complaint was effectuated on Defendant on November
16, 2009.
4. This case involves claims by the Plaintiff that Defendants improperly processed,
serviced, and transferred her home mortgage loan. Although it is difficult to determine from the

1 Complaint exactly what the allegations against the named Defendants are, Plaintiff seems to allege
2 that Defendants did not properly make the disclosures required by 15 U.S.C. §1601 and 12 USC
3 §2605, TILA, RESPA and HOEPA.

4 This case is one of many that have recently been filed across the country by homeowners
5 seeking to simply stall or delay foreclosure proceedings after the plaintiffs have long stopped
6 making the required mortgage payments.

7
8 5. Plaintiff's claims appear to be based on alleged violations of federal statutes.
9 Defendant denies such violations.

10 6. These claims are completely preempted by the provisions of the federal statutes and
11 Plaintiff's claims must be recharacterized as federal claims for relief.

12 7. Defendant is entitled to remove this action to this Court under 28 U.S.C. §1441 on
13 the grounds that this Court has original jurisdiction over the subject matter of this action under 28
14 U.S.C. §1331 in that, under the complete preemption doctrine, it is an action arising under the
15 laws of the United States, specifically the provisions of the National Bank Act and provisions of
16 the Truth in Lending Act, 15 U.S.C. §1601 et seq., 15 U.S.C. §2601, 1602(f) and Regulation Z
17 §226.2(a)(17).

18 8. Supplemental jurisdiction of any state law claims is proper under 28 U.S.C.
19 §§1367(a).

20 9. Thirty days have not elapsed since Defendant was served with the Summons and
21 Complaint in this action.

22 10. Copies of all process, pleadings and other orders served upon Defendant are
23 attached hereto.

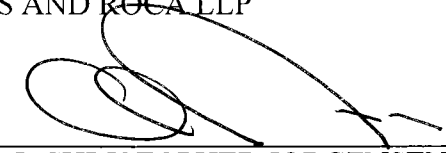
24 11. A true and correct copy of this Petition for Removal will be filed with the Clerk of
25 the Eighth Judicial District Court of the State of Nevada, Department X.
26
27
28

WHEREFORE, Defendant prays that this action be removed.

DATED this 2 day of December, 2009.

LEWIS AND ROCA LLP

By




J. CHRISTOPHER JORGENSEN, ESQ.
STATE BAR NO. 5382
DIANA S. ERB, ESQ.
STATE BAR NO. 10580
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Defendant Mortgage Electronic
Registration Systems, Inc.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing document was made on the 3 day of December 2009, by depositing a copy for mailing, first class mail, postage prepaid, at Las Vegas, Nevada, to the following:

Edward G. Marshall, Esq.
324 So. Third Street, #2
Las Vegas, NV 89101
Attorney for Plaintiff


an employee of Lewis and Roca LLP

33

1 EDWARD G. MARSHALL
2 324 S. Third Street #2
3 Las Vegas, NV 89101
4 TEL (702) 384-7162 FAX (702) 3846584
5 ATTORNEY FOR PLAINTIFF

FILED
OCT 15 2009
Clerk of Court

6 DISTRICT COURT
7 CLARK COUNTY NEVADA

8)
9)
10 ANDREA G. SANIEL)
11 PLAINTIFF)

CASE NO: A-09-601879-C
DEPT. NO. X

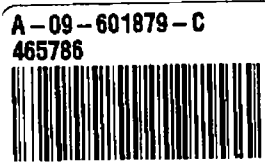
12 VS.

DATE OF HEARING: _____
TIME OF HEARING: _____

13 RECONTRUST COMPANY)
14 BANK OF AMERICA)
15 COUNTRYWIDE HOME LOANS)
16 MORTGAGE ELECTRONIC REGISTRATION)
17 SYSTEMS, INC.)

COMPLAINT FOR EMERGENCY
INJUNCTIVE AND DECLARATORY
RELIEF AND TO STAY
FORECLOSURE SALE

18 DEFENDANTS



19
20 _____)

ARBITRATION EXEMPT

21

TITLE TO REAL ESTATE
RECEIVED

0

OCT 16 2009
CLERK OF THE COURT

1 Plaintiff sues Defendants for emergency injunctive and declaratory relief and to
2 stay an imminent foreclosure sale, and states:

3 **A. Parties and Jurisdiction**

4 A. Plaintiff is of majority age and the property that is the subject of this
5 action is located at 6507 Coronado Canyon Avenue, Las Vegas, NV
6 89142, hereinafter referred to as "the property" and is further described
7 as Assessor's Parcel Number 161-10-512 and having a legal description
8 of Parcel I: lot 13 in Block 2 of Bonita Hills, as shown by map thereof on
9 file in Book 113 of Plats, Page 4 of the official County Records of Clark
10 County Nevada. Parcel II: Easements of record as shown over streets
11 and common areas.

12 B. Defendant RECONTRUST COMPANY, hereinafter referred to as
13 "RECON" is and was at all times material hereto, on information and
14 belief, a Nevada corporation organized under the laws of the State of
15 Nevada and acting as an agent of Defendant BOA and Defendant
16 COUNTRYWIDE HOME LOANS and Defendant MERS. The address for
17 RECON is 2380 Performance Drive, Richardson, TX 75082.

18 C. Defendant COUNTRYWIDE HOME LOANS, hereinafter referred to as
19 "COUNTRYWIDE" is the alleged "servicer" of the loan in connection with
20 a non-judicial foreclosure proceeding as to the Property. On information
21 and belief, Defendant Countrywide has no legal interest in either the
22 mortgage or the Note the subject of this action.

23 D. Defendant BANK OF AMERICA, hereinafter referred to as BOA has
24 taken over the assets and liabilities of Defendant COUNTRYWIDE and
25 upon information and belief has no legal interest in either the mortgage or
26 the Note the subject of this action.

7

1 E. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
2 hereinafter referred to as "MERS," is a Delaware corporation with offices
3 located at 3300 S.W. 34th Avenue, Suite 101, Ocala, FL 34474. Upon
4 information and belief, MERS is named solely as a nominee Beneficiary
5 in the Deed of Trust and is not a Party of Interest in the mortgage on the
6 property and has no legal standing related to the property.

7 **B. Background**

- 8 1. Defendant MERS, through its agent Defendant RECON, instituted a non-
9 judicial foreclosure proceeding to foreclose on a mortgage as to the
10 Property which mortgage was originally issued in the name of Defendant
11 COUNTRYWIDE.
- 12 2. Upon information and belief, Plaintiff alleges that Defendant
13 COUNTRYWIDE was not the lender and was only a middleman
14 performing a service for a fee on behalf of New York based trust which
15 sold securities to raise the capital for Plaintiff's mortgage. According to
16 IRS rules, the Trust cannot own the mortgage collateral in the
17 securitization pool without incurring significant tax liability. Plaintiff does
18 not deny that a mortgage obligation was created, however, Plaintiff does
19 deny that any obligation is owed to any of the Defendants in this action.
20 Plaintiff does not know who the obligation is owed to, and Plaintiff does
21 not know the amount of the obligation in case any Toxic Asset Relief
22 Program (TARP) funds were applied to Plaintiff's mortgage, or other such
23 funds as A.I.G. insurance proceeds. Upon information and belief Plaintiff
24 alleges that Defendant COUNTRYWIDE was not in fact the Lender, and
25 that defendant COUNTRYWIDE had no risk of loss in this loan.
- 26 3. Proof of the Current holder In Due Course has never been produced to the
27 Plaintiff, and Defendants have failed to prove or even take the position
28 that it is the holder of all rights under the Note, which is the instrument of
29 indebtedness which would permit the legal holder thereof to declare a
30 default which would trigger a foreclosure.

- 1 4. Further, Defendants as alleged "Trustee" for unnamed "Certificate
2 Holders" of a series of mortgage-backed securities, has failed to
3 demonstrate that it, and not the Certificate Holders, is the party with the
4 true ownership interest in the Mortgage the subject of this action, or that
5 the Certificate Holders have acceded or legally assigned their rights to and
6 under the subject Mortgage to Defendants, specifically the right to seek a
7 foreclosure.
- 8 5. As such, Defendants have not demonstrated that they have suffered an
9 actual or threatened injury as a consequence of any default, which distinct
10 and palpable injury is legally required under applicable Nevada law in
11 order for Defendants to satisfy the legal prerequisite to prove that it has a
12 sufficient personal stake in and legal standing to institute the foreclosure
13 on the Property.
- 14 6. Further, there is a cloud on the title to the Property which Defendants have
15 failed to extinguish as it has chosen to institute a non-judicial foreclosure.
16 The cloud arises out of the filing of an action by Defendants which seeks
17 to foreclose on the same Property which is the subject of the mortgage
18 originally issued and funded by a New York securitization scheme.
- 19 7. Defendants have notified Plaintiff that the foreclosure sale on the Property
20 has been scheduled to take place on Monday, October 19, 2009. .
- 21 8. This Complaint is thus being timely filed in accordance with applicable law
22 to challenge the foreclosure prior to the issuance of any Certificate of Title
23 following sale. Upon information and belief, Plaintiff alleges that a
24 severance of the ownership and possession of the original Note and
25 Mortgage has occurred and as the true owner and holder of both the
26 original Note and Mortgage are unknown as a result of one or more
27 alleged assignments and the parsed sale of certain rights under the Note.
28 Therefore, Defendants are legally precluded from foreclosing on the
29 Property unless and until it can demonstrate full legal standing to do so.

1 **C. Material Facts and Allegations**

2 9. Plaintiff hereby incorporates all allegations of the above paragraphs 1-8 of the
3 General Allegations and Nature of the Actions as if they were fully stated.

4 10. Plaintiff is the nominal payor on the subject promissory Notes. The
5 Defendant "Loan Sellers" are financial institutions that were paid a fee to pose as a
6 residential mortgage lender, when in fact the source of loan funds and the actual lender
7 (Investors in Certificates) and underwriter (Mortgage Aggregator and Investment
8 Banker) were other parties whose identities and receipt of fees and profits were
9 withheld from Plaintiff at Closing and continue to be withheld from Plaintiff by the
10 Defendants contrary to the requirements of Federal Law and applicable State Law. Any
11 reference to Lender or Lenders or Loan Seller in the ongoing
12 complaint is to refer to all Defendants and their agents and accomplices whether
13 Countrywide or Washington Mutual.

14 11. Unknown to Plaintiff, the Loan Seller, Defendants CWHLOANS and WAMU
15 acting as principal in their relationships with the "independent appraiser" of the property
16 and the mortgage broker and mortgage originator, induced the Plaintiff into a
17 transaction that did not and could not meet normal underwriting standards for a
18 residential mortgage. The Loan Seller posed as a conventional mortgage lender thus
19 leading Plaintiff to reasonably believe that the Loan Seller, the mortgage broker, and the
20 loan originator had an interest in the success (repayment of the loan) of the transaction
21 that Plaintiff was induced to believe was being executed at the time of the "closing" of
22 the subject loan transaction.

23 12. In fact, the Loan Seller, mortgage broker, appraiser, loan originator, title
24 agent, escrow agent and Trustee on the Deed of Trust, had no financial stake (i.e.,
25 liability) in the transaction and no interest other than obtaining Plaintiff's signature on a
26 "loan" that could almost never be repaid, contrary to representations and assurances
27 from the conspiring participants in this fraudulent scheme. In fact, the "Appraisal" was
28 intentionally and knowingly inflated along with other loan data to justify the closing of the
29 "loan transaction."

1 13. Plaintiff relied upon the due diligence of the apparent "Lender" (i.e., actually
2 the Loan Seller) in executing and accepting the closing documents. In fact, no "lender"
3 was involved in the closing in the sense of a true investor who had a stake in the
4 outcome of the transaction other than earning fees.

5 14. Plaintiff relied upon the due diligence of the apparent "Lender" (i.e., actually
6 the Loan Seller) in executing and accepting the closing documents. In fact, no "lender"
7 was involved in the closing in the sense of an entity performing due diligence and
8 evaluation pursuant to national standards for underwriting and evaluating risk of loaning
9 money in a residential loan closing.

10 15. Thus no bank or other financial institution actually performing under the
11 standards, rules and regulations governing such institutions was the "lender" which is
12 one basis for Plaintiff's complaint. to wit: that the inflated appraisal added an
13 undisclosed cost to the loan which when added to the other terms, disclosed and
14 undisclosed, and amortized over the real expected life of the "loan" exceeds the limits of
15 conscience and is not subject to any exemption because the presence of a financial
16 institution in the transaction was a ruse in which the form of the transaction covered
17 over and misled the Plaintiff as to the real parties in interest and the fees generated by
18 the production of the subject "loan transaction."

19 16. The purpose of the Defendants was solely to collect fees, rebates, kickbacks
20 and profits that were never disclosed to Plaintiff and have only recently been discovered
21 by Plaintiff through consultation with experts in securitization of residential mortgage
22 loans, and diligent research including the filings of some parties with the Securities and
23 exchange Commission which disclose the normal manner of operating this fraudulent
24 scheme.

25 17. Upon information and belief, Plaintiff alleges that Defendants have ignored or
26 refused to comply with the Real Estate Settlement Procedures Act, the Truth in Lending
27 Act, the Home Owners Equity Protection Act, the Federal Fair Credit Reporting Act and
28 other Federal and State statutes and regulations, and Plaintiff reserves the right to bring
29 suit in the future related to the violations of these statutes and regulations.

1 18. Plaintiff is aware of professionals who have conducted interviews with
2 witnesses and have personally observed the practices and facts alleged herein. Besides
3 the obvious theft of identity which lies at the core of the pattern of conduct defining the
4 Defendants' illegal and fraudulent scheme, it is observably obvious that the property
5 was
6 appraised improperly, never verified despite "stringent" underwriting standards imposed
7 by Government Sponsored Entities (interim investors) with which the Defendants
8 purported to comply (and did not) to wit: the appraisal report shows the fair market value
9 of the property dramatically increasing over a period of 24 months and then returning to
10 a much lower value within 48 months after the closing of the "loan" transaction.
11 Plaintiff's property was purchased in December of 2004 for a little over \$600,000 and
12 today and for some time has probably been worth only approximately \$300,000 if one
13 could find a willing buyer in today's now deflated market which is probably closer to what
14 the true value was in 2004.

15 19. Further, the appraisal raises questions of value that indicate an inflated value.

16 20. The Loan Seller was named as the Lender on the subject promissory note
17 and under the mortgage terms allegedly securing the performance under the subject
18 note. The "Trustee" was named as the Trustee on the Deed of Trust executed at the
19 time of the alleged "closing" of the "loan transaction." In accordance with State law, the
20 Deed and terms of security were recorded in the county records allegedly in violation of
21 NRS 205.395 which prohibits recording of a fraudulent document. Defendant knew at
22 the time that the loan was made that there was fraud involved because Defendant was
23 not the real "lender" or investor in the loan. The real lender or investor was the
24 purchaser of securities from a Wall Street securitized loan pool which was not licensed
25 to loan mortgage money in the State of Nevada which is a violation of NRS 645B.900.

26 21. Notwithstanding the above, and without the knowledge of the Plaintiff, the
27 Loan Seller had entered into Assignment and Assumption Agreements with one or more
28 parties and Pooling and Service Agreements with one or more parties including but not

1 limited to the mortgage aggregator prior to or contemporaneously with the "Closing" of
2 the subject "loan

3 transaction." Defendants do not have the note, and are not the holder in due course of
4 the note. Therefore defendants do not meet the definition of a "Lender" as stated in
5 NRS 598D.050. Consequently, all notices of default and acceleration of debt are invalid
6 since they were not received from a true party of interest. Therefore any procedural
7 process has not been met according to Nevada law, NRS 107.080 which states that
8 notices are required from a party holding a lien. In this case none of the parties are
9 holding the lien, i.e. the note, or encumbrance. In this present case the Beneficiary is
10 named as MERS which is not a party of interest in the subject property. More will be
11 said about this further on in this complaint.

12 22. Under the terms of these agreements, the Loan Seller received a sum of
13 money,

14 usually on receiving an application for a loan equal to the gross amount of the loan
15 sought by Plaintiff plus a fee of 2.5% or more which was allocated to the subject loan
16 transaction. This fee was not disclosed to Plaintiff.

17 23. Contrary to the documents presented before and during the "closing" of the
18 "loan

19 transaction" the Loan Seller was neither the source of funding nor the "Lender."

20 24. Thus at the time of recording, the source of funding and the "Lender" was a
21 different

22 entity than the nominal mortgagee or beneficiary under the deed of trust and was
23 neither named nor disclosed in any fashion which is a violation of NRS 205.395.

24 25. The security for the "loan" thus secured an obligation that had been paid in
25 full by a

1 third party. Said third party(ies) was acting as a financial institution or "Lender"
2 without even having been chartered or registered to do so despite regulations to the
3 contrary from laws and rules of State as written in NRS 645B.900

4 26. Some form of documentation represented by the Loan Seller to the
5 Mortgage Aggregator was presented before or contemporaneously with the "closing" of
6 the loan" transaction. In some cases the documentation included actual copies of the
7 documents presented at "Closing."

8 27. In most cases it consisted of either forged blank notes or vague descriptions
9 of the content of the notes that were placed into the pool of assets that would be
10 "securitized."

11 28. Plaintiff has discovered numerous cases in which the "loan closing" either did
12 not take place at all or included documentation substantially different than the original
13 offer and acceptance and substantially different than what could have been reported to
14 the Mortgage Aggregator prior to the "closing." Plaintiff has discovered numerous cases
15 in which foreclosure has proceeded despite the fact that no loan closing was ever
16 consummated, no papers were ever signed, or the loans were properly rescinded
17 properly under law. For example, Wells Fargo Mortgage has forwarded application for
18 mortgage to Mortgage Pool Managers. Even though the mortgages were never closed
19 as solid business, Wells has tried to foreclose more than once on loans it never made.

20 29. Plaintiff does not know what version of documentation was presented to the
21 Mortgage Aggregator and if the Mortgage Aggregator took one or more varying
22 descriptions of the alleged "loan documents" into more than one pool of assets which
23 was eventually sold for the purpose of securitizing the assets of the pool which included
24 the subject loan transaction either once or more than once. Plaintiff has not been able to
25 obtain such information and is under the impression that the Defendants treat their
26 "borrowers" with complete silence and defiance or obfuscation.

27 30 .There is no assignment of the subject mortgage in the county records, but
28 there may be a non-recorded Pooling and Services" Agreement and a non-recorded

1 Assignment and Assumption Agreement which appears to substitute the Trustee over
2 the pooled assets for the nominal Trustee in the Deed of Trust. This may be a violation
3 of Covenant 9. of NRS 107 which requires any change of Trustee, such as a
4 substitution, to be effectuated by a Corporate Resolution of the Board of Directors of the
5 Beneficiary, and that Corporate Resolution with Seal to be recorded in the records of
6 the County Recorder. Without such any substitution is not effectuated.

7 31. The powers of this second Trustee were in turn transferred to either a
8 Trustee for a Special Investment Vehicle (which performed the accounting and reporting
9 of the pool assets) or to an investment bank Collateral Debt Obligation manager whose
10 department performed the accounting and reporting of the pool assets.

11 32. The reporting of the pool assets consisted principally of descriptions of the
12 notes "signed" by borrowers and limited descriptions of the general terms of the note
13 such that the note appeared to be more valuable than the initial terms of payment by the
14 "borrower."

15 33. The note from the subject "loan transaction" was eventually allocated into a
16 new corporation (Special Purpose Vehicle) formed for the express purpose of holding
17 the pooled assets under certain terms.

18 34. The terms included the allocation of payments from one note to pay any
19 deficiency in payment of another note in unrelated "loan transactions" contrary to the
20 terms of each such note which required payments to be allocated to the principal,
21 interest, escrow and fees associated with only that specific "loan transaction." This is
22 referred to as cross collateralization, but was never disclosed to the Plaintiff before
23 closing.

24 35. Whether such "deficiency" was caused by the difference between the higher
25 general terms of description of the note or the lower actual payment requirements from
26 the "borrower" is not known, despite numerous requests for accounting and the refusal
27 of Defendants to provide any such information.

1 36. The investment banking firm arranged through payment for a false inflated
2 appraisal of the certificates and/or issuer of the certificates that would be sold to
3 investors in much the same way as it had procured the false appraisal of the property
4 that "secured" the "loan transaction." In addition, insurance was purchased from
5 proceeds of this transaction, credit default swaps were purchased from proceeds of this
6 transaction, the investors' investments were "oversold" to create a reserve pool from
7 which the SPV could pay deficiencies in payments, and the SPV created cross-
8 collateralization agreements and overcollateralization of the pool assets to assure
9 payments to the investors, thus creating co-obligors on the payment stream due from
10 the Plaintiff on the subject "loan transaction." The fact that Plaintiff's loan was involved
11 in a cross collateralization process whereby some of Plaintiff's monthly payments could
12 be used to pay the loans of other Borrowers was never disclosed to Plaintiff. This was
13 fraud by omission. Had this been disclosed to Plaintiff, Plaintiff would have never
14 agreed to such an arrangement.

15 37. The pool assets, including the Plaintiff's subject "loan transaction" were
16 pledged completely to the owners of the "asset-backed securities." All the certificates
17 were then transferred to a Seller who in turn sold the certificates in varying
18 denominations, each of which had slightly different terms depending upon which
19 segment of the pool (tranche) secured the investment.

20 38. If there is a holder in due course of the Plaintiff's note arising from the subject
21 "loan transaction" it is the investors who purchased said securities (certificates). Some
22 of said securities are held by the original purchaser thereof, others were sold at weekly
23 auction markets, others were paid by re-sales of property that was "secured", others
24 were paid from pre-payments, others were paid by sale at full or partial price to the
25 investment bank that originated the entire transaction, some of which might be held by
26 the Federal Reserve as nonrecourse collateral, and others might have been paid by one
27 or more of the insurance, credit default swaps, cross guarantees or cross
28 collateralization of the segment of the pool that secured the relevant investor who
29 owned certificates backed by a pool of assets that included the subject "loan
30 transaction." Plaintiff has no idea who is the true holder in due course of the note

1 related to the property of Plaintiff. Even though Plaintiff has requested this information
2 from Defendants, they have not complied with the request of Plaintiff.

3 39. It is doubtful that any of the Defendants have any knowledge or have made
4 any effort to determine whether the putative holders in due course have been paid in
5 whole or in part. It can only be said with certainty that these Defendants seek to enforce
6 loan documents for which they have already been paid in full plus illegal fees for
7 participating in an illegal scheme. These Defendants seek to add insult to injury by
8 demanding ownership of the property in addition to already receiving full payment in full
9 long before any delinquency or default even allegedly occurred.

10 40. In order for these Defendants to maintain legal standing in connection with
11 the subject loan transaction they are required to show the entire chain of title of the note
12 and the entire chain of title of the mortgage. The plaintiff believes defendants are unable
13 to show entire chain of title leading Plaintiff to conclude that the Defendants cannot
14 produce such evidence of a complete chain of title or are intentionally withholding the
15 information that would show breaks in such chain. Again, NRS 107 Covenant 9
16 precludes the Defendants from making changes on the alleged loan without recording
17 the corporate resolution and seal of the beneficiary.

18 41. Plaintiff is left in the position of being in an adversary proceeding with ghosts.
19 While these Defendants have informally offered or considered providing indemnification
20 for any third party claims, the fact remains that any relief awarded these defendants,
21 any standing allowed to these defendants would expose the Plaintiff to multiple claims
22 and suits from an unknown number of parties and entities that all claim, possibly
23 correctly, to the holders in due course. This would place Plaintiff in an untenable
24 position of DOUBLE OR MULTIPLE FINANCIAL JEOPARY. Any grant of a certificate
25 of title to an entity other than Plaintiff or the nominal mortgagee creates an incurable
26 defect in title.

27 42. There is no recording of any document in the county records which predates
28 the Defendants' attempt to initiate foreclosure and/or eviction or which would authorize
29 them to proceed. See **Exhibit A** which is a simple diagram depicting the numbers of

1 parties involved in the securitization process. However under the Doctrine of a Single
2 Transaction, there are only two parties of interest in any mortgage. Those two parties
3 are the Investor and the Borrower. All the other parties are simply middle men who
4 have performed a service for a fee, but are not interested parties, and therefore have no
5 standing in court to bring an action.

6 43. The end result of the false and misleading representations and material
7 omissions of the Defendants as to the true nature of the mortgage loan actually being
8 processed, which said Defendants had actual knowledge of, was in direct conflict with
9 the original Uniform Residential Loan Application, preliminary Truth in Lending
10 Statement, and Plaintiff's stated intentions and directions to said Defendants at the time
11 of the original application for the fraudulent loan.

12 44. At no time whatsoever did Defendants ever advise Plaintiff (nor, as far as
13 Plaintiff can determine, any "investor" in certificates of mortgage-backed securities) that:

14 A. The mortgage loan being processed was not in Plaintiff's best interest;

15 B. The terms of the mortgage loan being processed were less favorable than the
16 fixed-rate loan which Defendants previously advised Plaintiff he qualified for which was
17 a 15% down fixed payment mortgage. Only at the last minute was Plaintiff's mortgage
18 "switched" by Defendants to a 10% down with a negative amortizing loan that added
19 over \$15,000 per year to the principal. There was little chance of this type of loan ever
20 being paid off short of winning a lottery.

21 C. That the mortgage loan was an inter-temporal transaction (transaction where
22 terms,
23 risks, or provisions at the commencement of the transaction differ at a later time) on
24 which Plaintiff was providing cover for Defendants' illegal activities.

25 D. That Plaintiff would likely be placed in a position of default, foreclosure, and
26 deficiency judgment regardless of whether he met his loan obligations once the true
27 lender or true holder(s) in due course appeared;

1 E. That the originating "lender", that being Defendants and/or undisclosed third
2 parties, had no intention of retaining ownership interest in the mortgage loan or fully
3 servicing same and in fact may have and probable had already pre-sold the loan, prior
4 to closing, to a third party mortgage aggregator pursuant to previously executed
5 documentation (Assumption and assignment Agreement, Pooling Services Agreement,
6 etc. all executed prior to Plaintiff's "loan Closing."

7 F. That the mortgage loan was actually intended to be repeatedly sold and
8 assigned to multiple third parties, including one or more mortgage aggregators and
9 investment bankers (including but not limited to Defendants DOES 1-10), for the
10 ultimate purpose of bundling the Plaintiff's mortgage with hundreds or perhaps
11 thousands of others as part of a companion, support, or other tranche in connection with
12 the creation of a REMIC security known as a Collateralized Mortgage Obligation
13 ("CMO"), also known as a "mortgage-backed security" to be sold by a securities firm
14 (and which in fact ended up as collateral for Asset-Backed Securities Certificates,
15 created the same year as the closing);

16 G. That the mortgage instrument and Promissory Note may be sold, transferred,
17 or assigned separately to separate third parties so that the later "holder" of the Note may
18 not be in privity with or have the legal right to foreclose in the event of default.

19 H. That in connection with the multiple down line resale and assignment of the
20 mortgage and Promissory Note that assignees or purchasers of the Note may make
21 "pay-downs" against the Note which may effect the true amount owed by the Plaintiff on
22 the Note.

23 I. That a successive assignee or purchaser of the Note and Mortgage may not,
24 upon assignment or purchase, unilaterally impose property insurance requirements
25 different from those imposed as a condition of the original loan (also known as
26 prohibition against increased forced-placed coverage) without the Plaintiff' prior notice
27 and consent.

28 J. As a result of the closing and in connection therewith, Defendants placed the
29 Plaintiff into a pool of a sub-prime adjustable rate mortgage programs, with Defendants

1 intentionally misleading Plaintiff and the other borrowers and engaging in material
2 omissions by failing to disclose to Plaintiff and other borrowers the fact that the nature of
3 the mortgage loan applications had been materially changed without Plaintiff's
4 knowledge or consent, and that Plaintiff was being placed into a pool where the usual
5 loan was an adjustable rate mortgage program despite borrower not being fully qualified
6 for such a program.

7 45. Prior to the closing, Defendants and/or undisclosed third parties failed to
8 provide to Plaintiff the preliminary disclosures required by the Truth-In-Lending Act
9 pursuant to 12 CFR (also known as and referred to herein as "Regulation Z) sec. 226.17
10 and 18, and failed to provide the preliminary disclosures required by the Real Estate
11 Settlement Procedures Act ("RESPA") pursuant to 24 CFR sec. 3500.6 and 35007,
12 otherwise known as the GFE.

13 46. Defendants and/or undisclosed third parties also intentionally failed and/or
14 refused to provide Plaintiff with various disclosures which would indicate to the Plaintiff
15 that the consumer credit contract entered into was void, illegal, and predatory in nature
16 due in part to the fact that the final TIL showed a "fixed rate" schedule of payments, but
17 did not provide the proper disclosures of the actual contractually-due amounts and
18 rates.

19 47. Defendants failed and/or refused to provide a HUD-1 Settlement Statement
20 at the closing which reflected the true cost of the consumer credit transaction. As
21 Defendants failed to provide an accurate GFE or Itemization of Amount Financed
22 ("IOAF"), there was no disclosure of a Yield Spread Premium ("YSP", which is required
23 to be disclosed by the Truth-In-Lending Act) and thus no disclosure of the true cost of
24 the loan.

25 48. As a direct and proximate result of these failures to disclose as required by
26 the Truth-In-Lending Act, Defendants received a YSP in a substantial amount of without
27 preliminary disclosure, which is a *per se* violation of 12 CFR sec. 226.4(a), 226.17 and
28 18(d) and (c)(1)(iii). The YSP raised the interest rate which was completely unknown or
29 approved by the Plaintiff, as he did not received the required GFE or IOAF.

1 49. In addition, the completely undisclosed YSP was not disclosed by Defendant
2 in their broker contract, which contract was blank in the area as to fees to be paid to
3 Defendant. This is an illegal kickback in violation of 12 USC sec. 2607 as well as State
4 law which gives rise to all damages claims for all combined broker fees, costs, and
5 attorneys' fees.

6 50. The Amount Financed within the TIL is also understated which is a material
7 violation of 12 CFR sec. 226.17 and 18, in addition to 15 USC sec. 1602(u), as the
8 Amount Financed must be completely accurate with no tolerance.

9 51. Defendants were under numerous legal obligations as fiduciaries and had the
10 responsibility for overseeing the purported loan consummation to insure that the
11 consummation was legal, proper, and that Plaintiff received all legally required
12 disclosures pursuant to the Truth-In- Lending Act and RESPA both before and after the
13 closing.

14 52. Plaintiff, not being in the consumer lending, mortgage broker, or residential
15 loan business, reasonably relied upon the Defendants to insure that the consumer credit
16 transaction was legal, proper, and complied with all applicable laws, rules, and
17 Regulations.

18 53. At all times relevant hereto, Defendants regularly extended or offered to
19 extend consumer credit for which a finance charge is or may be imposed or which, by
20 written agreement, is payable in more than four (4) installments and was initially
21 payable to the person the subject of the transaction, rendering Defendants "creditors"
22 within the meaning of the Truth-In-Lending Act, 15 U.S.C. sec. 1602(f) and Regulation Z
23 sec. 226.2 (a)(17).

24 54. At the closing of the subject "loan transaction", Plaintiff executed Promissory
25 Notes and Security Agreements in favor of Defendants as aforesaid. These
26 transactions, designated by Defendants as a Loan, extended consumer credit which
27 was subject to a finance charge and which was initially payable to the Defendants.

1 55. As part of the consumer credit transaction the subject of the closing,
2 Defendants retained a security interest in the subject property which was Plaintiff's
3 principal residential dwelling.

4 56. Defendants engaged in a pattern and practice of defrauding Plaintiff in that,
5 during the entire life of the mortgage loan, Defendants failed to properly credit payments
6 made; incorrectly calculated interest on the accounts; and have failed to accurately
7 debit fees.

8 57. At all times material Defendants had actual knowledge that the Plaintiff'
9 accounts were not accurate but that Plaintiff would make further payments based on
10 Defendants' inaccurate accounts.

11 58. Plaintiff made payments based on the improper, inaccurate, and fraudulent
12 representations as to Plaintiff' accounts.

13 59. As a direct and proximate result of the actions of the Defendants set forth
14 above, Plaintiff overpaid in interest.

15 60. Defendants also utilized amounts known to the Defendants to be inaccurate
16 to determine the amount allegedly due and owing for purposes of foreclosure.

17 61. Defendants' violations were all material in nature under the Truth-In-Lending
18 Act.

19 62. Said violations, in addition to the fact that Plaintiff did not properly receive
20 Notices of Right to Cancel, constitute violations of 15 USC sec. 1635(a) and (b) and 12
21 CFR sec. 226.23(b), and are thus a legal basis for and legally extend Plaintiff' right to
22 exercise the remedy of rescission, and Plaintiff reserves the right to pursue damages
23 under a separate suit for these violations of Federal law but does hereby pursue
24 violations under Nevada State law.

25 63. Defendants assigned or attempted to assign the Note and mortgage to
26 parties who did not take these instruments in good faith or without notice that the
27 instruments were invalid or that Plaintiff had a claim in recoupment. Pursuant to Nevada

1 Uniform Commercial Code, sec. 104.3302, Defendants are not a holder in due course
2 and are thus liable to Plaintiff, individually, jointly and severally.

3 64. On information and belief and given that the consumer credit transaction was
4 an intertemporal transaction with multiple assignments as part of an aggregation and
5 the creation of a REMIC (real estate mortgage investment conduit) tranche itself a part
6 of a predetermined and identifiable CMO, all Defendants shared in the illegal proceeds
7 of the transaction; conspired with each other to defraud the Plaintiff out of the proceeds
8 of the loan; acted in concert to wrongfully deprive the Plaintiff of his residence; acted in
9 concert and conspiracy to essentially steal the Plaintiff's home and/or convert the
10 Plaintiff's home without providing Plaintiff reasonably equivalent value in exchange; and
11 have conducted an illegal enterprise within the meaning of the Nevada State RICO
12 statute, NRS 207.470 and NRS 207.390.

13 65. On information and belief and given the volume of residential loan
14 transactions solicited and processed by the Defendants, the Defendants have engaged
15 in two or more instances of racketeering activity involving different victims but utilizing
16 the same method, means, mode, operation, and enterprise with the same intended
17 result.

18 66. Upon information and belief, Defendants typically steered unwary borrowers
19 into subprime mortgages even when they might have been qualified for a prime
20 mortgage. This was done because Countrywide and Washington Mutual earned more
21 money from the Wall Street aggregators with a mortgage that had an economic interest
22 rate adjustment "pop" to provide more revenue and bring a higher selling price to an
23 investor.

24 67. Upon information and belief, consequently, the Defendants paid higher
25 commissions to its agent to sell subprime mortgages that were in most cases destined
26 to failure and default.

27 68. Upon information and belief, executives of Defendants were aware of this
28 and continued the practice to make more profit without regard for the best interest of the
29 borrower. Even so, agents of Defendants were trained with scripts to tell customers that

1 they want to get "the best loan" for the customer. In Plaintiff's case he was steered into
2 a negative amortizing adjustable interest rate loan. This type of loan can almost never
3 be paid off.

4 69. Upon information and belief, Plaintiff alleges that many of these loans were
5 engineered so that they would default to promote more refinancing, and more fees at
6 the expense of the borrowers. Additionally, with credit default swaps, and other
7 derivative financing, Defendants could make even more money on loans that defaulted
8 than on those that remained current.

9 70. Upon information and belief, Defendants did not disclose to borrowers that
10 they planned to sell the loans, and therefore had no economic interest in the longevity
11 and success of the loan beyond the closing itself.

12 71. By June 3, 2007, twenty-five percent (25%) of Defendants loans were
13 delinquent. Even in 2004, Defendant manager, Adam Michaelson, advised that the
14 predatory lending practices of the Defendant would likely result in a real estate crash of
15 significant nationwide magnitude, aggravated and sustained by defaults relative to
16 which borrowers would be unable to obtain refinancing.

17 72. NRS 205.372 (1) (a) protects the consumer from mortgage fraud where the
18 lender commits fraud by misrepresentation or concealment of a material fact.

19 73. NRS 205.372 (1) (b) states that it is a violation for the lender to use the result
20 from (a) and to (c) receive proceeds from the transaction and (d) to conspire with
21 another person to violate (a) through (d) and in subsection (e) it is a violation to file a
22 document with the County Recorder that includes a misrepresentation or a concealment
23 of a material fact.

24 74. The Statute calls this behavior a Class C Felony and calls for fines of up to
25 10 years in jail and \$10,000 or both for every infraction.

26 75. Section 2 of the same statute states if there is a pattern of such behavior as
27 there was with the Defendants in this case, then it is to be considered a Class B Felony
28 with up to 20 years in jail and up to \$50,000 fine for each infraction.

1 76. Section 3 of this same statute says that each infraction is to be treated as a
2 separate violation, and carrying all the penalties for each violation.

3 77. Section 4 of NRS 205.372 states that a loan can be rescinded within six (6)
4 months of conviction of a violation under this statute.

5 78. Upon information and belief, Plaintiff alleges that Defendants are in violation
6 of all the above referenced statutes, not only with the Plaintiff, but with numerous other
7 Nevadans during the same time period numbering into the thousands who have also
8 been defrauded.

9 79. Upon information and belief, Defendants used a computer based
10 underwriting system referred to as "CLUES" which was insufficient to legitimately qualify
11 a borrower for a loan.

12 80. NRS 598D.100 has codified Nevada law and has made it illegal under
13 subsection (c) as an unfair lending practice to make a "no doc" (no documentation) loan
14 and under section (e) to make a "stated income" loan where the income of the Borrower
15 is not evaluated.

16 81. Defendants violated Plaintiff's rights by making an unfair loan that Plaintiff
17 was not qualified for, and which Plaintiff was not able to repay regardless of Defendants
18 assurances that refinancing would be available even when Defendant had no stake in
19 the loan of Plaintiff. Defendant was only interested in making fees for closing the loan.

20 82. NRS 598D.110 states that a lender who willfully engages in an unfair lending
21 practice described in this chapter such as mentioned above, then the lender is liable to
22 the borrower in an amount equal to the sum of: 2 (a), three times the amount of any
23 actual damage sustained by the borrower, and 2(b), the costs of the borrower bringing
24 the action and reasonable attorney fees. Here, by Defendants knowing willful
25 participation in the securitization scheme including fraudulent appraisal inflation, the
26 Plaintiff can show he has lost at least an amount equal to \$300,000 which when
27 multiplied by 3 equals \$900,000.00 without counting the amount of equity that Plaintiff

1 invested in the property as down payment and closing cost, and monthly payments,
2 taxes, HOA dues, insurance, etc.

3 **First Cause of Action**

4 **1. Misrepresentation and Fraud by Omission**

5 83. Plaintiff hereby incorporates the allegations of paragraphs 1 through 82
6 inclusive as well as all other paragraphs herein as though the same were fully stated.

7 84. The corporate Defendants, their executives, employees, and agents
8 committed fraud in direct violation of NRS 205.372 by failing to disclose to the Plaintiff
9 the predatory, unethical and unsound and unfair lending and foreclosure practices, and
10 bonuses and inflated salaries paid pursuant thereto. Defendants were possessed of
11 such duty to make such disclose. The facts which Defendants failed to disclose were
12 material to the mortgage documents, and to the Plaintiff's informed right to rescind.
13 Defendants knew, and should have known, if these facts had been disclosed, Plaintiff
14 would not have executed the subject mortgage documents and would have ceased to
15 rely upon Defendants integrity and good faith. Plaintiff had he been fully informed would
16 have rescinded. Defendants assiduously cultivated reliance upon its alleged integrity
17 and good faith through years of advertising--which falsely portrayed Defendants as
18 bastions of honesty and as possessing high minded motives to assist American and
19 Nevadan home buyers. Defendants lied. Defendant continued to fail to disclose these
20 material facts for instance, continued to receive mortgage payments even after
21 Defendant Bank of America acquired Countrywide and Chase acquired Washington
22 Mutual. Defendants continue to solicit business from the Plaintiff as recently as
23 September of 2009 when Defendants attempted to entice Plaintiff into refinancing yet
24 again.

25 85. Plaintiff relied upon the malicious and false misrepresentations of the
26 Defendants and Plaintiff was entitled to rely upon the misrepresentations of the
27 Defendants. Defendants knew that their behavior was not in the best interest of the
28 Plaintiff and Defendants knowingly took Plaintiff down a path of economic turmoil,
29 suffering, and loss.

2. Quiet Title

88. The title to Plaintiff's property is clouded. That is, the Defendants or some other Defendant, named or unnamed which acted in concert with Defendants, or at Defendants' request or direction recorded a deed of trust, or some other documents which indicate at least one of the defendants possess a security interest.

90. Plaintiff is unaware who the actual holders in due course are and the known Defendants have failed to produce a note showing they have an interest in the property with proper evidence of chain of title from start to present.

21

93. Plaintiff demands by this complaint that the Deed of Trust must be rescinded and the subject loan transaction be canceled since the note has been severed from the Mortgage.

94. Plaintiff is entitled to quiet title against subject Defendants, and clearing title of the purported subject mortgage encumbrance.

95. Plaintiff therefore seeks a declaration from this Court that the title to the subject property is vested in Plaintiff alone, and that the Defendants herein, each of them, be declared to have no estate, right, title, or interest in the subject property and that said Defendants and each of them, be forever enjoined from asserting any estate, right, title, or interest in the subject property adverse to the Plaintiff herein. Plaintiff respectfully requests that the Court would issue an Order Compelling Defendants, and each of them, to transfer or release legal title and alleged encumbrances thereon and possession of the subject property to Plaintiff herein, and grant Plaintiff a judgment forever enjoining said Defendants, and each of them, from ever claiming any estate, right, title, or interest in the subject property, and for other such relief as the Court may deem proper and grant.

Third Cause of Action

3. Contractual Breach of Duty of Good Faith and Fair Dealing

96. Plaintiff hereby incorporates all the allegations of paragraphs 1- 95 inclusive and all other paragraphs, as though the same were fully stated herein.

97. Defendants owed to Plaintiff a contractual duty of good faith and fair dealing and a duty to restrain from frustrating the purposes of the mortgage contract. Defendants directly assumed this duty and also by implication, which render the Defendants subject to suit, both in contract and in tort. This duty is implicit to all

1 mortgage contracts. Mutuality of obligation existed per the subject contracts.
2 Defendants' conduct violates the public policy of the State of Nevada by forcing
3 mortgagors to strictly adhere to contracts that the Defendant mortgagees have
4 breached. Thousands of citizens of the State of Nevada have and are continuing to
5 lose their homes while Defendants, if not prevented by this Court, will continue to reap ill
6 gotten gains by defrauding Nevadans and wrongly evicting Nevadans from their homes.

7 98. Defendants breached this duty by engaging in predatory, unethical, and
8 unfair, and unsound lending practices relative to other persons, e.g., members of
9 statutorily protected classes of persons, and by failing to timely disclose these practices.
10 Defendant BOA has ratified Defendant COUNTRYWIDE'S conduct by failing to
11 disclose material facts as per NRS 205.372 and failing to ensure that the disclosures
12 are now made. Now Defendants are attempting to reap enormous unjust profits by
13 stealing homes from Nevadans through wrongful foreclosure actions.

14 99. Since Plaintiff is not a mortgage banker or mortgage lender, Plaintiff relied
15 upon the material misrepresentations and omissions and concealment of material facts
16 by the Defendants. Had Plaintiff had this information disclosed to him, Plaintiff would
17 not have executed the mortgage documents.

18 100. Plaintiff has been severely damaged as a direct and proximate result of the
19 malicious unlawful and unfair conduct of the Defendants.

20
21 **Fourth Cause of Action**

22 **4. Tortious Breach of the Implied Duty of Good Faith and Fair Dealing**

23 101. Plaintiff hereby incorporates all the allegations of paragraphs 1- 100
24 inclusive and all other paragraphs, as though the same were fully stated herein.

25 102. Defendants breached the implied duty of good faith and fair dealing
26 attendant to the subject contract in a tortuous manner. Defendants, by virtue of the trust
27 reposed by Plaintiff, are liable in tort.

1 103. As a direct and proximate result Plaintiff has been harmed as described
2 herein.

3 **Fifth Cause of Action**

4 **5. Civil Conspiracy**

5 104. Plaintiff hereby incorporates all the allegations of paragraphs 1- 103
6 inclusive and all other paragraphs, as though the same were fully stated herein.

7 105. Defendants entered into a conspiracy with other members of MERS,
8 including the other named corporate Defendants for the common purpose of accruing
9 economic gains for themselves at the expense of the Plaintiff and other Nevada
10 mortgagors. The actions of the Defendants were committed intentionally, willfully, and
11 wantonly, and with reckless disregard for the rights of the Plaintiff. This conspiracy has
12 been ratified, and participated in by Defendant BOA by failing to inform Plaintiff and
13 other Nevada mortgagors of their rights and continuing to collect monies and
14 communicate with the Plaintiff and other mortgagors based on the false premise that
15 fraud by omission has not occurred. Defendants continue to illegally steal homes and
16 eject Nevadans from their homes notwithstanding knowledge of their own illegal
17 conduct and unclean hands, and without making legally required disclosures to those
18 being evicted.

19 106. As a direct and proximate result of the conspiracy of Defendants the
20 Plaintiff has been harmed and damaged as described herein, and Plaintiff thus
21 demands from the Defendants restitution in the form of actual damages, exemplary
22 damages, and legal costs, and attorney fees if Plaintiff chooses to hire counsel.

23 **Sixth Cause of Action**

24 **6. Civil RICO and Racketeering**

25 107. Plaintiff hereby incorporates all the allegations of paragraphs 1- 106
26 inclusive and all other paragraphs, as though the same were fully stated herein.

1 108. The Nevada Revised Statute 207.390 defines racketeering activity as "at
2 least two crimes related to racketeering that have the same or similar pattern, intents,
3 results, accomplices, victims or methods of commission, or are otherwise interrelated by
4 distinguishing characteristics and are not isolated incidents, if at least one of the
5 incidents occurred after July 1, 1983, and the last of the incidents occurred within five
6 years after a prior commission of a crime related to racketeering." The mortgages
7 which Defendants, in concert with other corporate Defendants, executed with the
8 Plaintiff was one of many executed in Nevada from 2004 to 2008. Defendants engaged
9 in racketeering, as prohibited by NRS 207 via the predatory and abusive lending
10 practices described herein, and the repeated failure to disclose such - both relative to
11 the Plaintiff and to other mortgagors as well. Defendants BOA has ratified the acts and
12 omissions of CONTRYWIDE and in so doing have ratified racketeering activity. The
13 activities of the Defendants constituted an "enterprise" with the aim and objective of the
14 enterprise being to perpetrate fraud upon the Plaintiff through the use of intentional
15 nondisclosure, material misrepresentation, and creation of fraudulent loan documents.
16 Each of the Defendants is an "enterprise Defendant."

17 109. As a direct and proximate result of the actions of the Defendants, the
18 Plaintiff has and continues to suffer damage and harm. Plaintiff is entitled, pursuant to
19 NRS Chapter 207, to treble damages, attorneys' fees, to an Order Quieting Title, and to
20 other relief.

21 **Seventh Cause of Action**

22 **7. Unjust Enrichment**

23 110. Plaintiff hereby incorporates all the allegations of paragraphs 1- 109
24 inclusive and all other paragraphs, as though the same were fully stated herein.

25 111. The bonuses, inflated salaries and corporate profits which stemmed from
26 Defendants' racketeering, predatory lending, unethical and unsound and unfair lending
27 practices resulted in unjust enrichment for the Defendants. Furthermore, the corporate
28 Defendants have received or are attempting to receive taxpayer monies, e.g., bailout
29 monies channeled through the United States Government. The corporate Defendants

1 named herein have not disclosed to the United States Government the systemic fraud
2 by omission alleged herein, or the racketeering activities described herein. Accordingly,
3 the Defendants have been unjustly enriched pursuant to the fraud, breach of contract
4 and racketeering perpetrated against Plaintiff and are compounding, or attempting to
5 compound, that unjust enrichment via receipt of taxpayer monies.

6 112. Upon information and belief, Defendants utilized funds received as a result
7 of the Troubled Asset Recovery Program to further the predatory, unethical and
8 actionable conduct described herein. The improper use of these funds constituted a form
9 of unjust enrichment and further the conspiracy alleged herein. Some of these monies
10 were used to pay bonuses and inflated salaries and to otherwise unjustly enrich
11 Defendants, and their managers, shareholders, employees and agents.

12 113. As a direct and proximate result of Defendants activities the Plaintiff has
13 been injured and damaged as described herein.

14 **Eight Cause of Action**

15 **8. Conspiracy to Commit Fraud Related to the MERS System**

16 114. Plaintiff hereby incorporates all the allegations of paragraphs 1- 113
17 inclusive and all other paragraphs, as though the same were fully stated herein.

18 115. Upon information and belief the corporate Defendants did knowingly
19 conspire to engage in a scheme to promote, encourage, and facilitate fraudulent and
20 predatory lending and foreclosure practices which eroded the national real estate
21 market, including the Nevada real estate market. As a direct and proximate result the
22 national real estate market, including the real estate values in Nevada have been
23 substantially damaged and Plaintiff has thereby been harmed as alleged herein.

24 116. Upon information and belief Defendants conspired with MERS and are or
25 have been shareholders in MERS or members of the MERS system, and have acted to
26 facilitate and further the unlawful goals of the MERS system.

1 117. Upon information and belief the Defendants and MERS conspired to
2 develop a system of earning profits from the origination and securitization of residential
3 loans without regard for the rights of the Plaintiff, i.e., they have engaged in predatory
4 and deceptive lending practices; they intentionally created, managed, operated and
5 controlled the MERS system for the specific purpose of designating a sham beneficiary,
6 i.e., MERS, or some other entity; the Defendants intentionally created, managed,
7 operated and controlled the MERS system with the intent of rendering the task of
8 identifying and holding responsible Defendants who engaged in predatory lending
9 practices difficult or impossible, i.e., they created and operated the MERS system to
10 further a conspiracy.

11 118. Honorable Justice Linda B. Reigle of the United States Bankruptcy Court
12 for the Nevada Region has ruled on March 31, 2009 in the case of "In Re Joshua and
13 Stephanie Mitchell," Case No. BK-S-07-16226-LBR, Chapter 7, MERS does not have
14 legal standing to order a foreclosure sale on its own or through any other Trustee. .
15 Additionally, Honorable Samuel C. Bufford, United States Bankruptcy Judge for the
16 Central District of California agrees with the comments above as indicated in his opinion
17 of October 22, 2008 in the case of Defendant Vargas in case number LA08-17036-SB.
18 MERS takes no mortgage applications, makes no loans, holds no notes, and is not a
19 party of interest in this transaction, and has no standing in court to order a foreclosure.
20 MERS has cheated many county recording departments out of millions of dollars for
21 recording fees that should have been paid for the recording of assignments, etc. The
22 MERS system operates to perform a "whitewashing effect" to cover up improperly
23 executed documents, missing documents, forged documents, and defective documents
24 in an effort to make them legal. This is fraud on a national scale.

25 119. Additionally, the Supreme Court of both Kansas and Arkansas have
26 recently ruled that MERS does not have standing to bring about a foreclosure action.
27 See, Landmark Bank v. Kesler 2009 KAN. Lexis 834. Also see, MERS v. Southwest
28 Homes of Arkansas, 2009 ARK. Lexis 121.

29 120. As a direct and proximate result of Defendants actions, Plaintiff has been
30 damaged as described herein.

Ninth Cause of Action

9. Fraud by Obtaining Signature by False Pretences

121. Plaintiff hereby incorporates all the allegations of paragraphs 1- 120 inclusive and all other paragraphs, as though the same were fully stated herein.

122. NRS 205.390 states that a person who, with intent to cheat or defraud another, designedly by color or aid of any false token or writing or other false pretense, representation or presentation obtains the signature of any person to a written instrument is guilty of a category D felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

123. Upon information and belief, Defendants have violated the law as it is prescribed in NRS 205.390 by obtaining Plaintiff's signature on the mortgage documents by false pretense and misrepresentation, and fraud of omission.

124. As a direct and proximate result of Defendant's unfair and illegal actions, Plaintiff has been damaged as described herein.

125. Plaintiff respectfully asks the court for an Order of Restitution of all the monies that Plaintiff has expended and for restitution of all damages Plaintiff has sustained related to the fraudulent mortgage contract that Defendants enticed Plaintiff to sign.

Tenth Cause of Action

10. Injunctive Relief

126. . Plaintiff hereby incorporates all the allegations of paragraphs 1- 125 inclusive and all other paragraphs, as though the same were fully stated herein.

127. Defendants caused Deeds of Trust to be executed and recorded which identified or substituted MERS as the "Nominee Beneficiary Only" regarding the subject property.

1 128. At the time the Plaintiff allegedly signed the Deeds of Trust he was without
2 knowledge that MERS previously declared to Defendants, or some of them, that MERS
3 would never hold a beneficial interest in any Deed of Trust. That is, the scope of MERS'
4 declaration included the Deeds of Trust which Plaintiff allegedly executed.

5 129. Defendants, or some of them, knew, and should have known, prior to the
6 presentation of the subject Deeds of Trust that the MERS' policy was to refrain from
7 holding a beneficial interest in either the subject Deeds of Trust or the subject property.
8 Defendants, or some of them, knew, or should have known that MERS' declaration to
9 this effect was part and parcel of a conspiracy to violate public policy and the law.

10 130. Notwithstanding knowledge of MERS' deceptive and predatory business
11 practices and declaration, Defendants used false and misleading misrepresentations to
12 Plaintiff, and failed to disclose to Plaintiff of MERS' declaration and the predatory and
13 deceptive schemes orchestrated by MERS. Defendants thereby intended to cause
14 Plaintiff to rely upon their representations, implied and direct, as well as upon their
15 silence.

16 131. Plaintiff was entitled to so rely and remained uninformed of the operative
17 and material facts as to the identity of MERS, and the relationship between MERS and
18 the Defendants, and the conspiracy that MERS and the Defendants created and
19 participated in. Plaintiff manifested this reliance by allegedly executing the Deed of
20 Trust as well as other documents attendant to the mortgage contract.

21 132. Defendants deceived Plaintiff by creating a sham beneficiary pursuant to
22 the Deeds of Trust. Defendants acted with illegal and actionable intent in derogation of
23 public policy and the law. For instance, the designation of MERS as the beneficiary was
24 intended by Defendants to render difficult or impossible to identify the actual owner of
25 beneficial interest holder of the Deed of Trust until such time as Defendants chose to
26 designate the owner or beneficial interest holder pursuant to a predatory foreclosure.
27 The designation of a sham beneficiary was intended to facilitate a possible wrongful
28 foreclosure. By maintaining the fiction that MERS is a properly designated beneficiary,
29 Defendants have violated NRS 205.372 and NRS 205.395 and NRS 204.470.

1 133. The deception perpetrated by Defendants with regards to the Deeds of
2 Trust was part and parcel of a calculated scheme to defraud Plaintiff and other
3 Nevadans. This deception was intended to deny to Plaintiff and other Nevadans access
4 to Nevada Courts. Defendants knew of the illegality of their predatory lending schemes
5 and pursuant to the designation of a sham beneficiary, interposed a procedural
6 roadblock so as to forestall an adjudication on the merits.

7 134. Defendants are therefore estopped from relying on the Deeds of Trust. The
8 designation of MERS as a sham beneficiary was not a clerical or inadvertent error. That
9 designation is evidence of fraud and was part and parcel of a fraudulent course of
10 conduct. As a direct and proximate result of Defendants actions, Plaintiff was harmed
11 and damaged as described herein.

12 135. Plaintiff has repudiated the mortgage contracts via this lawsuit and via a
13 refusal to honor the contract through continued payments. At this time, Plaintiff
14 allegedly stands in technical default of the paper mortgage contracts and contends that
15 the contracts are null and void pursuant to the legal principles stated herein, including
16 estoppels, and pursuant to offset. That is, damages owed to Plaintiff upon being trebled
17 pursuant to Nevada's anti-racketeering statute exceed the face value of the alleged
18 promissory notes.

19 136. The subject property is an important asset of Plaintiff. Plaintiff has owned
20 the subject property since 2004. Plaintiff intends to continue to make the subject
21 property an important asset for a long indefinite period.

22 137. Plaintiff will be subject to emotional and physical trauma and will be
23 irreparably harmed if Defendants are allowed to exploit a Deed of Trust which was
24 fraudulently obtained so as to deny Plaintiff the quiet enjoyment of this property via a
25 wrongful foreclosure.

26 138. For the Court to allow Defendants to foreclose on Plaintiff's property would
27 be a violation of NRS 205.380 which prohibits the obtaining of a property by false
28 pretense.

1 139. Furthermore, NRS 645F.440 prohibits a foreclosure where there is fraud on
2 the homeowner. This is a case where the Defendants have perpetrated fraud on the
3 Plaintiff homeowner as described herein and the Court should not allow Defendants to
4 unjustly enrich themselves again by illegally taking Plaintiff's home through a fraudulent
5 wrongful foreclosure.

6 140. Nevada law is now codified in NRS 589D et. Seq. and does not allow loans
7 to be made based upon stated incomes and no documentation as these loans were.
8 This type of lending practice is seen as de facto predatory in nature. Even though
9 Defendants had the availability of IRS form 4506T which clearly indicated that Plaintiff's
10 income was not qualified for these loans, nonetheless, Defendants approved the loans
11 in a manner that Plaintiff relied upon Defendants approval and expertise. Plaintiff was
12 entitled to rely upon Defendants' approval of the loans.

13 141. NRS 107.085 limits the power of a Trustee to bring about a sale of real
14 property in foreclosure where there has been unfair dealing and Plaintiff respectfully
15 requests the Court to disallow the Trustee to bring a sale because of unfair dealing in
16 the subject case.

17 142. As a direct and proximate result of Plaintiff's reliance upon Defendants'
18 actions and omissions, Plaintiff has been damaged and harmed as herein described.

19 WHEREFORE, Plaintiff respectfully requests the court to temporarily and
20 permanently enjoin Defendants from any foreclosure action, any eviction action, and
21 any further negative credit reporting action, and that Defendants would forthwith
22 remove any negative credit reports filed against Plaintiff related to this property.

23 **Eleventh Cause of Action**

24 **11. Declaratory Relief**

25 143. Plaintiff hereby incorporates all the allegations of paragraphs 1- 142
26 inclusive and all other paragraphs, as though the same were fully stated herein.

1 144. Nevada Rules of Civil Procedure Chapter 17 give the Plaintiff the right to
2 know who the true parties of interest are pertaining to any lawsuit.

3 145. Upon information and belief Plaintiff alleges that none of the Defendants
4 are a Lender according to the definition of NRS 589D.050 which states that a Lender is
5 a holder of a note or obligation. Again, in NRS 40.506 a secured lender is defined as a
6 holder of a note. Upon information and belief Plaintiff alleges that none of the
7 Defendants are currently holder in due course of any note related to the subject
8 property. Plaintiff alleges upon information and belief that Defendants either sold the
9 notes through a securitization scheme or were only middlemen using funds other than
10 their own, and as such that all defendants are not parties of interest, and therefore have
11 no standing to bring any action in this or any court against Plaintiff related to the subject
12 property. Additionally, all notices received from Plaintiff from the Defendants are invalid
13 and null and void and of no effect since the Defendants are not parties of interest and
14 have no standing to issue such notices. Nor do Defendants have the right or authority
15 to modify any loans or the terms of any loans, or conduct any foreclosure, or conduct
16 any short sale of said property since Defendants are not currently parties of interest with
17 standing to do anything related to the Plaintiff and the subject property.

18 146. NRS 30.040 gives the Plaintiff the right to have his rights clarified by a
19 Court of law regarding the validity of the contracts allegedly executed with the
20 Defendants.

21 147. Plaintiff is a person and a property owner of Nevada according to the
22 statute NRS 30.020.

23 148. The Deed of Trust and the mortgage are a contract or an instrument
24 according to the meaning of the statute NRS 30.040.

25 149. NRS 30.030 places this type questions within the scope of this Court and
26 the declaration of the Court shall have the force of a final judgment.

27 150. NRS 30.140 states that declarations of the Court are to be remedial in
28 nature and to settle and afford relief from uncertainty or insecurity in situations with

1 respect to rights, status and other legal relations, and are to be liberally construed and
2 administered.

3 151. THEREFORE, Plaintiff respectfully requests the Court to declare and issue
4 an Order that Plaintiff is the rightful owner of record of the subject property which has
5 been his home and principal residence for almost five years.

6 152. FURTHERMORE, Plaintiff respectfully requests the Court to declare and
7 issue an Order that none of the Defendants has any right, title, estate, interest, or other
8 dealing with the subject property of the Plaintiff and that Defendants would strike from
9 the record of the Clark County Recorder any reference to any Deeds of Trust and or
10 mortgages related to the subject property.

11 153. Plaintiff additionally respectfully requests the Court to issue an Order
12 requiring Defendants to remove any negative credit reports against Plaintiff related to
13 the subject property.

14 RELIEF SOUGHT

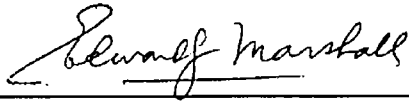
15 WHEREFORE, having set forth numerous legally sufficient causes of action
16 against the Defendants, Plaintiff prays for the entry of Final Judgment against all the
17 Defendants jointly and severally, in an amount not yet quantified, ^{exceeding \$19,000 and} but to be proven at
18 trial and such other amounts to be proven at trial, and for costs and attorneys' fees; that
19 the Court find that these transactions the subject of this action are illegal and are
20 deemed void; that the Defendants be enjoined from foreclosing on the subject property
21 and any further proceedings be enjoined; and for other and further relief which is just
22 and proper. Moreover, Plaintiff asks the Court to Temporarily and Permanently Stay
23 any action of Foreclosure and Eviction by the Defendants against the Plaintiff. Plaintiff
24 ask the Court for a Quiet Title Order to bar the Defendants forever from coming against
25 the Plaintiff related to the subject property. The Plaintiff asks the Court not only for
26 statutory damages, but also punitive damages to show an example to any other parties
27 who may have ideas to follow in the conduct of the Defendants against the citizens of
28 Nevada. The Plaintiff asks the Court for treble damages as stated in the statutes.

1 Plaintiff asks the Court to remand this case back to the Nevada State Court Eighth
2 District in Las Vegas, Nevada.

3 **DEMAND FOR A JURY TRIAL**

4 Plaintiff demands a trial by jury of all matters so triable as a matter of right.

5
6 Respectfully submitted,

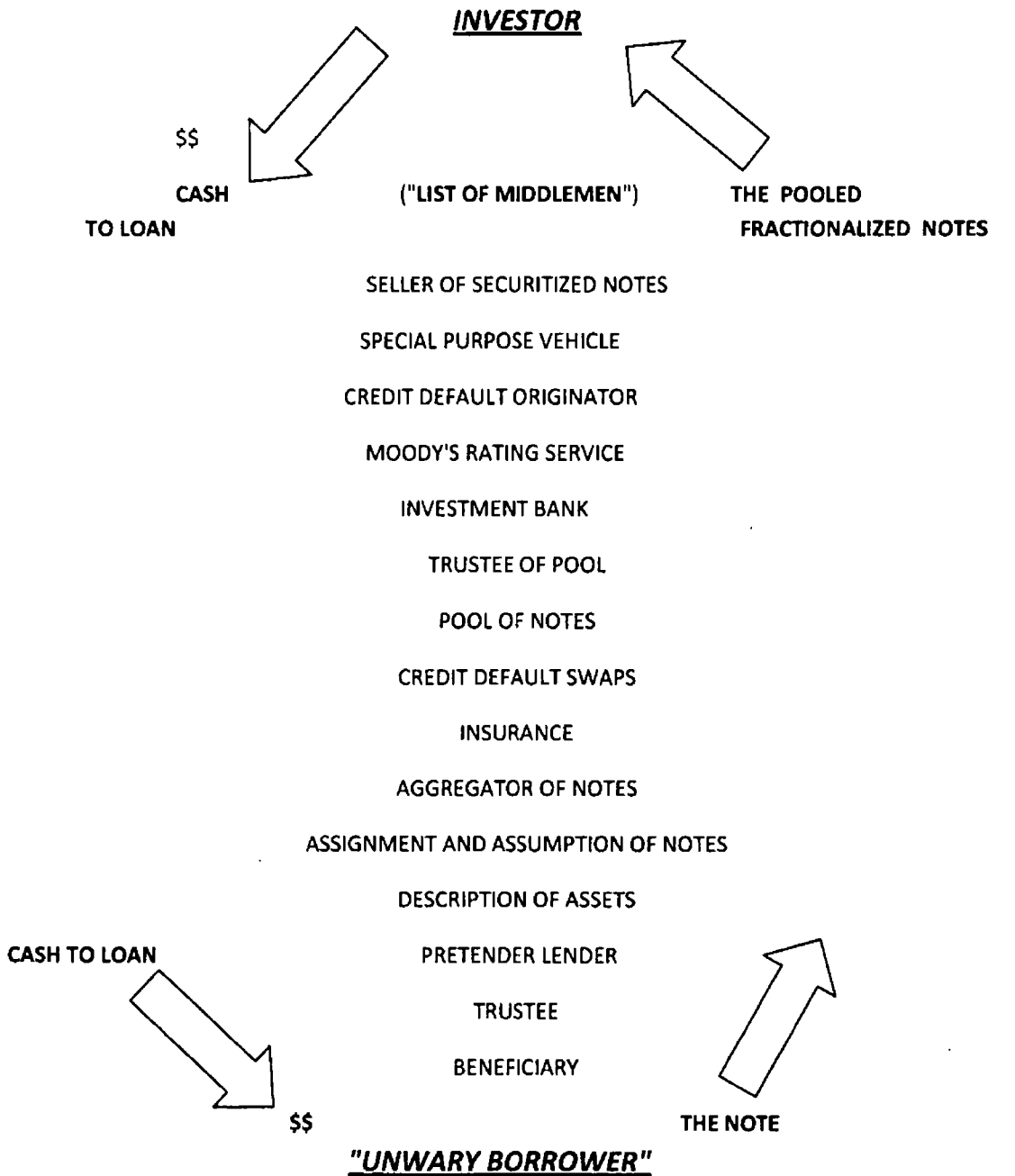
7 

8 _____ date: October 16, 2009

9 EDWARD G. MARSHALL, Esq.

10 Attorney for Plaintiff
11
12
13
14
15
16
17
18
19
20
21

EXHIBIT "A"



THERE ARE ONLY 2 PARTIES OF INTEREST IN EACH TRANSACTION, THE INVESTOR AND THE BORROWER. ONLY THE INVESTOR & THE UNWARY BORROWER ARE PARTIES OF INTEREST. ALL OTHERS ARE MIDDLEMEN WITHOUT AN INTEREST WHO ONLY PERFORM A SERVICE FOR A FEE AND TAKE A PROFIT.

SUMMIT

District Court

CLARK COUNTY, NEVADA

FILED

OCT 16 2009

J. Hamilton
CLERK OF COURT

09321 00289

ANDREA G. SANIEL,

Plaintiff,

VS.

RECONTRUST COMPANY,

BANK OF AMERICA,

COUNTRYWIDE HOME LOANS,

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

Defendants.

Case No.

Dept. No.

SUMMONS

JARED K. HONENBERG
Certified Process Server
5th Judicial Circuit

ID # 97-5-2

Date 11/16/09 Time 2:00 PM
Served Jeff Ogden

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT(S): A civil Complaint has been filed by the Plaintiff(s) against you for the relief set forth in the Complaint.

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you, exclusive of the day of service, you must do the following:

- File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court, with the appropriate filing fee.
- Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the Plaintiff(s) and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

4. The State of Nevada, its political subdivisions, agencies, officers, employees, board members, commission members and legislators, each have 45 days after service of this Summons within which to file an Answer or other responsive pleading to the Complaint.

Submitted by:

Edward G. Marshall
(Signature)

Name: EDWARD G. MARSHALL

Address: 324 So Third St #2

City/State/Zip: Las Vegas, NV 89101

Telephone: 702/384-7162

Attorney for: Plaintiff

By:

Deputy Clerk.

ALYSE HAMILTON



Date

REGIONAL JUSTICE CENTER
200 Lewis Ave.
Las Vegas, NV 89155

NOTE: When service is by publication, add a brief statement of the object of the action.

See Rules of Civil Procedure 4(b).

Revised 7/99/jh

FILED

OCT 16 2009

John T. Sullivan
CLERK OF COURT

1 EDWARD G. MARSHALL

2 324 S. Third Street #2

3 Las Vegas, NV 89101

4 TEL (702) 384-7162 FAX (702) 3846584

5 ATTORNEY FOR PLAINTIFF

6 DISTRICT COURT

7 CLARK COUNTY NEVADA

8) CASE NO: A-09-601879-C

9) DEPT. NO. X

10 ANDREA G. SANIEL

11 PLAINTIFF

12 VS.

13 RECONTRUST COMPANY

14 BANK OF AMERICA

15 COUNTRYWIDE HOME LOANS

16 MORTGAGE ELECTRONIC REGISTRATION

17 SYSTEMS, INC.

18 DEFENDANTS

19

20

21

NOTICE OF LIS PENDENS

A-09-601879-C
465787



RECEIVED

OCT 16 2009

CLERK OF THE COURT

NOTICE OF LIS PENDENS

TO ALL WHOM IT MAY CONCERN;

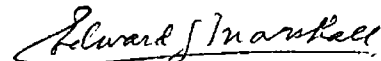
PLEASE TAKE NOTICE that an action at law has been commenced in the above entitled court by the Plaintiff against the Defendant and that said suit is now pending.

The object of said action is to quiet the title of Plaintiff against all persons and claims who allege any contrary interest therein.

Legal relief has been sought in said suit as pertains to certain real property and which affects the right, title and interest in and to said property.

The property so affected by this suit is described as follows: APN 161-10-512 also known as 6507 Coronado Canyon Avenue, Las Vegas, NV 89142 and further described as Lot 13, Block 2, Bonita Hills, as shown by map on file in Book 113 of Plats, Page 4 of Official Records of the Clark County Recorder.

DATED THIS 16th DAY OF October, 2009.



EDWARD G. MARSHALL
Attorney for Plaintiff
324 South Third Street #2
Las Vegas, Nevada 89101